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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,550	06/09/2005	Patrick T. Rigney	ITW-13619	7338
45482 7590 11/15/2007 PAULEY PETERSON & ERICKSON 2800 W. HIGGINS ROAD SUITE 365 HOFFMAN ESTATES, IL 60195			EXAMINER FERGUSON, LAWRENCE D	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 11/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/510,550	<b>Applicant(s)</b> RIGNEY ET AL.	
	<b>Examiner</b> Lawrence D. Ferguson	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/19/05;1/10/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Objection of Abstract***

1. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

### ***Claim Rejections – 35 USC § 102(b)***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 9, 12-13, 15 and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hughes et al. (U.S. 3,548,048).

Hughes discloses a uniaxially oriented strapping comprising two polymer components formed from polyolefins and polyester, where the highest melting polymer component (polyester) is present in the product from about 55 to about 99 weight percent and the other polymer component (polyolefin) is present in an amount of about 1 to about 45 weight percent (column 1, lines 24-44, 67-68; column 2, lines 43-60; column 3, lines 40 through column 4, line 17) as in claims 1-4 and 20. The limitation of

"optional additional additives" in claim 1, offers no positive level of criticality to the strapping, as the term optional is interpreted as additional additives may or may not be present. Hughes further discloses polyethylene terephthalate is added to the polyolefin polymer (column 3, line 74 through column 4, line 10) as in claim 5.

Because Hughes discloses a strapping comprising polyolefin and polyester (polyethylene terephthalate) in an amount of 1-45% and 55 to 99%, it is inherent for the polyester material to have an intrinsic viscosity as in claim 9. Recitation of a newly disclosed property does not distinguish over a reference disclosure of the article or composition claims. *General Electric v. Jewe Incandescent Lamp Co.*, 67 USPQ 155. *Titanium Metal Corp. v. Banner*, 227 USPQ 773. Applicant bears responsibility for proving that reference composition does not possess the characteristics recited in the claims. *In re Fitzgerald*, 205 USPQ 597, *In re Best*, 195 USPQ 430.

The reference discloses the polyolefin comprises high density polyethylene or polypropylene, which are chemically unmodified (column 3, lines 49-61) as in claims 12, 13 and 15. The strapping has a thickness no greater than 0.1 inch and a width greater than 0.15 inches (column 2, lines 32-42) which meets the requirements for claims 18-19 and 21-22.

#### ***Claim Rejections – 35 USC § 103(a)***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10, 23 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al. (U.S. 3,548,048) as evidenced by Heckerman et al (U.S. 4,827,578).

Hughes is relied upon for instant claims 1 and 19 as above. Hughes discloses the polyolefin polymer is low density polyethylene (column 3, lines 49-65). The reference does not explicitly disclose the low density polyethylene is linear. Heckerman teaches a strap formed from linear low density polyethylene (column 9, lines 1-6). In claim 26, the phrase, "by stretching in a longitudinal direction" introduces a process limitation to the product claim. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966. Further, process limitations are given no patentable weight in product claims. Because Heckerman teaches linear low density polyethylene are known to be made in to strappings, it would have been obvious to one of ordinary skill in the art to select a linear low density polyethylene as the low density polyethylene as evidenced by Heckerman.

Neither reference explicitly discloses the amount the strapping is stretched as in instant claims 27-28. The experimental modification of this prior art in order to achieve optimum operating conditions fails to render applicants' claims patentable in the

absence of unexpected results. *In re Aller* USPQ 233. One of ordinary skill in the art would have been motivated to adjust the uniaxial orientation of the strapping in order to optimize the (durability and flexibility of the strapping). (See *In re Boesch and Slaney*, 205 USPQ 215).

***Claim Rejections – 35 USC § 103(a)***

6. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al. (U.S. 3,548,048) in view of Nishimura et al (U.S. 5,607,183).

Hughes is relied upon for instant claim 1 as above. Hughes does not disclose the polyester in the strapping can be polybutylene terephthalate, polyethylene naphthalate or polyethylene isophthalate. Nishimura teaches reinforcing belts (straps) for an article (column 1, lines 23-25) where the straps comprise polyester material such as polybutylene terephthalate, polyethylene naphthalate or polyethylene isophthalate (column 14, lines 19-20 and 37-46). Because Nishimura teaches materials such as polybutylene terephthalate, polyethylene naphthalate and polyethylene isophthalate are known polyester materials within straps, it would have been obvious to one of ordinary skill in the art to select polybutylene terephthalate, polyethylene naphthalate or polyethylene isophthalate for the polyester material of Hughes to improve the calender processing ability and compactness of the strapped article (column 14, lines 19-21 and 28-29).

***Claim Rejections – 35 USC § 103(a)***

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al. (U.S. 3,548,048) in view of Maugans et al (U.S. 6,270,891).

Hughes is relied upon for instant claim 1 as above. Hughes discloses the polyolefin polymer is low density polyethylene (column 3, lines 49-65). The reference does not explicitly disclose the low density polyethylene is branched. Maugans teaches strapping polymer compositions can be made from thermoplastics such as highly branched low density polyethylene (LDPE) (column 1, lines 44-51 and column 13, lines 5-9). Because Maugans teaches highly branched low density polyethylene is known to be LDPE, it would have been obvious to one of ordinary skill in the art for the low density polyethylene of Hughes to be a branched low density polyethylene.

***Claim Rejections – 35 USC § 103(a)***

8. Claims 14 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al. (U.S. 3,548,048) in view of Steinkamp et al (U.S. 3,862,265).

Hughes is relied upon for instant claims 1 and 19 as above. Hughes does not disclose the polyolefin is grafted with a polar monomer, as in claim 14. Steinkamp teaches a strapping article comprising polyolefins (column 4, lines 12-21, column 10, lines 9-12) where the polyolefin is grafted with maleic anhydride or acrylic acid (polar monomers) (column 12, lines 1-5). Hughes and Steinkamp are combinable because

they are related to a similar technical field, which is strapping material. It would have been obvious to one of ordinary skill in the art to have grafted the polyolefin material of Hughes with maleic anhydride or acrylic acid (polar monomers), as taught in Steinkamp, to increase the clarity of the polymer material and to strengthen (harden) the strapping (column 9, lines 33-44).

***Claim Rejections – 35 USC § 103(a)***

9. Claims 16-17 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al. (U.S. 3,548,048) in view of Negi et al (U.S. 4,248,991).

Hughes is relied upon for instant claims 1 and 19 as above. Hughes does not disclose an additive comprising elastomeric material, such as a styrene block copolymer. Negi teaches a strapping formed with elastomer material, such as styrene block copolymer (column 3, lines 9-25). Hughes and Negi are combinable because they are related to a similar technical field, which is strapping material. It would have been obvious to one of ordinary skill in the art to have incorporated elastomer material, such as styrene block copolymer, as taught in Negi, in the strapping of Hughes to improve the flexibility of the strapping material (column 3, lines 38-45).

***Conclusion***




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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is 571-272-1522. The examiner can normally be reached on Monday through Friday 9:00 AM – 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
L. Ferguson  
Patent Examiner  
AU 1774

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER